

Senate Bill No. 680

CHAPTER 168

An act to amend Section 104556 of the Health and Safety Code, relating to tobacco settlement moneys.

[Approved by Governor August 27, 2013. Filed with
Secretary of State August 27, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 680, Wolk. Tobacco Master Settlement Agreement: qualified escrow funds.

Under existing law, states' attorneys general and various tobacco product manufacturers have entered into a Master Settlement Agreement (MSA), in settlement of various lawsuits, that provides for the allocation of money to the states and certain territories.

Existing law requires a tobacco product manufacturer selling cigarettes to consumers within the state to either become a participating manufacturer, as defined, and generally perform its financial obligations under the MSA, or to place specified amounts into a qualified escrow fund, which are calculated on a per unit sold basis, as specified. For each tobacco product manufacturer that places amounts into a qualified escrow fund, existing law requires that manufacturer to certify to the Attorney General that the manufacturer has complied with existing law, and the failure to place all required funds into escrow subjects the manufacturer to civil penalties, as specified.

This bill would, for the purposes of calculating the amount a tobacco product manufacturer is required to place in the qualified escrow fund, revise the definition of "units sold" to specify that it means the number of cigarettes sold to a consumer, regardless of whether the state excise tax was due or collected, but would exclude, among other things, cigarettes sold at federal military installations.

The people of the State of California do enact as follows:

SECTION 1. Section 104556 of the Health and Safety Code is amended to read:

104556. The definitions contained in this section shall govern the construction of this article.

(a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms “owns,” “is owned,” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more, and the term “person” means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(c) “Allocable share” means allocable share as that term is defined in the Master Settlement Agreement.

(d) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (2) tobacco, in any form, that is functional in the product, which because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in this section. “Cigarette” also includes “roll-your-own” tobacco, meaning any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of “cigarette,” 0.09 ounces of “roll-your-own” tobacco shall constitute one individual “cigarette.”

(e) “Master Settlement Agreement” means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

(f) “Qualified escrow fund” means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars (\$1,000,000,000) where the arrangement requires that the financial institution hold the escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds’ principal except as consistent with subdivision (b) of Section 104557.

(g) “Released claims” means released claims as that term is defined in the Master Settlement Agreement.

(h) “Releasing parties” means releasing parties as that term is defined in the Master Settlement Agreement.

(i) “Tobacco product manufacturer” means an entity that after the date of enactment of this article directly, and not exclusively through any affiliate:

(1) Manufactures cigarettes anywhere that the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where the importer is an original participating manufacturer as that term is defined in the Master Settlement Agreement, that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the

provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States); or

(2) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) Becomes a successor of an entity described in paragraph (1) or (2).

The term “tobacco product manufacturer” shall not include an affiliate of a tobacco product manufacturer unless the affiliate itself falls within any of paragraphs (1) to (3) of this subdivision.

(j) “Units sold” means the number of individual cigarettes sold to a consumer in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, regardless of whether the state excise tax was due or collected. “Units sold” shall not include cigarettes sold on federal military installations, sold by a Native American tribe to a member of that tribe on that tribe’s land, or that are otherwise exempt from state excise tax pursuant to federal law. The State Board of Equalization shall adopt any regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of the tobacco product manufacturer for each year.